



CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

O.A. No. 351/00033/AN/2018

Date of Order: 13.11.2018

Present: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

M. CHINNAIAH

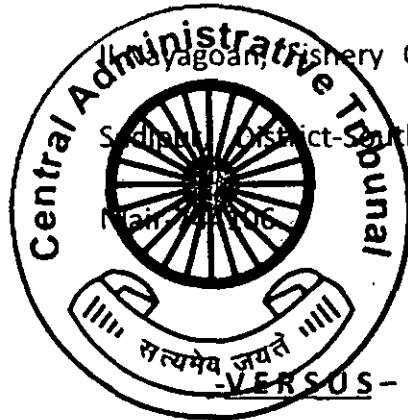
aged about 49 years, son of M. Muthaiah,

residing at Quarter No.NG/112-20, Type-

II, Dayagaoan, Fishery Colony, Post Office-

Sadashakti District-South Andaman, Port

Nalair-744106



...APPLICANT

-VERSUS-

1. **UNION OF INDIA,**

Service through the Secretary, Ministry of

Home Affairs, Jaisalmer House, 26, Man

Singh Road, New Delhi-110 011.

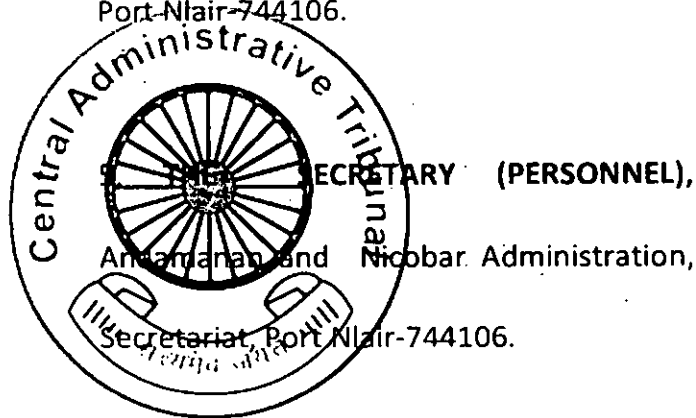
2. **THE LIEUTENANT GOVERNOR,**

Andaman & Nicobar Islands, Raj Niwas,

Port Nalair-744106.

3. THE ANDAMAN AND NICOBAR
ADMINISTRATION, service through the
Chief Secretary, Secretariat, Port Blair-
744106.

4. THE CHIEF SECRETARY -CUM-
DISCIPLINARY AUTHORITY, Andamanan
and Nicobar Administration, Secretariat,
Port Blair-744106.



6. THE ASSISTANT SECRETARY
(PERSONNEL), Andamanan and Nicobar
Administration, Secretariat, Port Blair-
744106.

.... RESPONDENTS

For the Applicant : Mr. P. C. Das, Counsel
Ms T Maity, Counsel

For the Respondents : Mr S K Ghosh, Counsel

ORDER**Per Ms. Bidisha Banerjee, Judicial Member:**

1. This O A has been preferred in order to seek the following reliefs :
 - a) To quash and/or set aside the impugned charge-sheet memo dated 2nd June, 1997 issued by the Chief Secretary, Andaman & Nicobar Administration being a Disciplinary Authority along with Article of Charges which was communicated to the applicant vide letter dated 9th June, 1997 being Annexure A-3 of this original application.
 - b) To quash and/or set aside the impugned penalty order dated 29th March, 2017 imposed by the Secretary(Personnel) acting as a Disciplinary Authority by awarding the capital punishment of dismissal from service against the applicant being Annexure A-13 of this original application.
 - c) To quash and/or set aside the impugned order No.3913 of the Appellate Authority dated 13th November 2017 whereby the Chief Secretary, who has issued a charge-sheet memo against the applicant as a Disciplinary Authority and acting as Appellate Authority decided the appeal preferred by the applicant and converted the punishment order of dismissal from service into a compulsory retirement against the applicant and the Chief Secretary cannot act as an Appellate Authority in this matter because he himself has issued the Charge-Sheet against the applicant and thereby grossly violated the CCS(CCA) Rules 1965 which cannot be sustainable in the eyes of law and may be liable to be quashed and/or set aside with imposition of heavy cost against the Chief Secretary.
 - d) To declare that the so-called disciplinary proceedings cannot be sustainable in the eye of law in terms of the Enquiry Report submitted by the Enquiry Officer and in terms of the judgment and order passed by the Learned Judicial Magistrate, First Class-I, Port Blair, Andaman & Nicobar Islands in GR Case No.1408 of 1995 and TR Case No.2406 of 1995 whereby the order of acquittal from all criminal charges.
 - e) To declare that the order of Punishment imposed by the Disciplinary Authority as well as order of Appellate Authority cannot be sustainable in the eyes of law which is issued in gross violation of the statutory rules of the CCS(CCA) Rules 1965 as because a person cannot become a judge in respect of his own allegation who has acted as a Disciplinary Authority by issuing charge-sheet and he cannot act as an Appellate Authority to decide the appeal preferred by the charged officer and on that ground alone the entire proceedings may be set aside and/or quashed.

- f) To pass an appropriate order directing upon the respondent authority reinstate the present applicant in service along with all consequential benefits including back-wages as well as promotional benefits on the basis of the acquittal order passed by the Learned Judicial Magistrate, First Class-I, Port Blair, Andaman & Nicobar Islands in GR Case No.1408 of 1995 and TR Case No.2406 of 1995 and on the basis of the Enquiry Report submitted by the applicant may be allowed to resume duty in his respective post after giving all consequential benefits including promotional benefits.
- g) To declare that the entire proceedings is otherwise bad in law and may be liable to be quashed and/or set aside by directing the respondent authority to reinstate the applicant in service along with all consequential benefits and further hold that the applicant is exonerated from all charges.
- h) Costs;
- i) Any other appropriate relief or reliefs as Your Lordship may deem fit and proper.

2. The applicant was charge sheeted vide charge memo dated 2.6.1997.

The gravamen of indictments against him were as under :

Statement of articles of charge frame against
Shri M. Chinnaiah, Lower Grade Clerk (u/s)

ARTICLE-1

That the said Shri M. Chinnaiah, while working as an Lower Gr. Clerk in the office of the Labour Commissioner, was directed to take over the charge of Cashier vide LC's Order No.11 dated 20.1.1992 with immediate effect. In pursuance to this Order, Shri Chinnaiah has taken over the charge of Cashier and had been working as Cashier from 20.1.1992 to 29.9.93. It was one of the duties of the Cashier to write the cash book of workman Compensation. Further, he did not write the cash book of Workmen Compensation for the period from 18.3.1993 to 29.9.1993, thereby he failed to maintain devotion to duty and violated the provisions of Rule 3(i) and 3(ii) of C.C.S. (Conduct) Rules, 1964. Though the Cash Book of Workmen Compensation was written by him for the period from 3.3.1992 to 17.3.1993 but he did not obtain the signature of the DDO in respect of the entries made in the Cash Book from 6/92 to 17.3.1993.

ARTICLE-1I

That the said Shri M. Chinnaiah while working as an Lower Gr. Clerk had withdrawn an amount of Rs.26,000/- (Rupees Twenty Six thousand only) on different occasions as per the details given in the ANNEXURE -I on the authorities given to him by the Commissioner for Workmen Compensation in the withdrawal form from Head Post Office at Port Blair but the amount was remitted to the Payees after a lapse of 4 to 9 months or more which clearly indicates that he misused the amount for a period of 4 to 9 months or more. Further the amount so drawn had not been reflected in the Cash Book for Workmen Compensation although the same was written upto 17.3.93. This shows that he failed to maintain devotion to duty and violated the provision of Rule 3(ii) of CCS (Conduct) Rules, 1964.

ARTICLE-1II

That the said Shri M. Chinnaiah while working as an Lower Gr. Clerk had withdrawn an amount of Rs.5,475/- (Rupees Five thousand four hundred and seventy five only) from Post Office Saving Bank Pass Book No.40334 and 47339 on 18.2.93 and 17.3.1993 respectively on the authority given to him by the Commissioner for Workmen Compensation in the withdrawal from Head Post Office, Port Blair but the amount was not paid to the payee (Name of the payee and other details given in the Annexure -II) so far which indicates clearly that he misused the money. This shows that he failed to maintain devotion to duty and violated the provision of Rule 3(ii) of C.C.S. (Conduct) Rule, 1964.

That the said Shri M. Chinnaiah while working as an Lower Gr. Clerk had withdrawn an amount of Rs.19,835/- (Rupees nineteen thousand eight hundred thirty five only) on different occasions sanctioned to the persons and order nos. given in the Annexure-III, on authority given to him by the Commissioner for Workman's Compensation in the withdrawal from Saving Bank Pass Book Nos. 47298, 46741, and 46742 from Head Post Office, Port Blair and paid to Smti. Neelamma and Smti. Shiva Packiam. Though the amount was reflected in the Cash Book no stamped receipt is available as a token of the payment made to the persons concerned. Further an amount of Rs.9853/- (Rupees Nine Thousand eight hundred and fifty three only) was withdrawn through cheque No.0763434 from State Bank of India, Port Blair on 6.5.92 and paid on 12.10.92 to Shri Dilmohan Bhagat which clearly indicates that he misused the amount for a period of more than 5 months i.e. from 6.5.92 to 12.10.92. Though it was reflected in the Cash Book no stamped receipt is available as a token of its payment. This shows that he failed to maintain devotion to duty and violated the provision of rule 3(ii) of C.C.S. (Conduct) Rules, 1964.

ARTICLE-V

That the said Shri M. Chinnaiah while working as an Lower Gr. Clerk was assigned to deal with the payment of workmen compensation the Commissioner for Workmen Compensation issued a cheque bearing No.0763449 dated 12.10.92 for Rs.,1,882/- (Rupees One Thousand eight hundred eighty two only) payable to Shri Paulose Toppno, Carpenter. But

the said Shri Chinnaiah, Lower Gr. Clerk had withdrawn an amount of Rs.61882/- (Rupees Sixty One thousand eight hundred and eighty two only) by inserting 6(six) at the left side beginning of Rs.1,882/-. An amount of Rs.1,882/- (Rupees One Thousand eight hundred and eighty two only) had remitted to Shri Paulose Toppno vide D.D.No.LTT/K/832159 dated 13.10.92 and sent by registered post vide D6/Misc-23(3)/90-LC/1834 dated 15.10.92. The balance amount of Rs.60,000/- (Rupees Sixty Tousand only) had been embezzled by the said Shri M. Chinnaiah. This clearly indicates that he misused the amount by way of forgery in the cheque corruption or misappropriation of Government money for his personal gain

ARTICLE-VI

That the said Shri M. Chinnaiah while working as an Lower Gr. Clerk had withdrawn an amount of Rs.61,751/- (Rupees Sixty one thousand seven hundred and fifty one only) vide cheque No.0763463 dated 27.7.93 by fixing a forged signature of the Commissioner for Workmen Compensation from State Bank of India, Port Blair which clearly indicates that he misused the amount by way of forgery.

ARTICLE-VII

That the said Shri M. Chinnaiah while working as an Lower Gr. Clerk had withdrawn an amount of Rs.53,433 (Rupees Fifty Three Thousand Four Hundred Thirty Three only) from State Bank of India, Port Blair against the cheque bearing No.0763463 by way of taking out the cheque leaf issued in favour of Commissioner for Workmen Compensation on 10.9.93. It clearly indicates that the said Chinnaiah has withdrawn the amount by way of forgery, embezzlement and criminal breach of trust for his personal gain.

ARTICLE-VIII

That the said Shri M. Chinnaiah while working as an Lower Gr. Clerk looking after the duties of Cashier and on physical verification of the chest by the DDO on 30.9.93, while Shri M. Chinnaiah was handed over the charge of Cashier following his suspension on physical verification on 30.9.93 the amount was found to Rs.9225 instead of Rs.13,433 as per Cash Book. There is a shortage of Rs.4208.50 which clearly indicates that he has misused the amount for his personal gain.

ARTICLE-IX

That the said Shri M. Chinnaiah while working as an Lower Gr. Clerk holding the charge of Stores for the period from 20.1.92 to 29.9.93. On verification of stock the verifier/ has found some items of stores are missing such as Colour T.V.(Islander), 3 Nos. Emergency light etc. Which clearly indicates that his dereliction of duty, unfaithfulness, carelessness and misappropriation of store items.

ARTICLE-X

That the said Shri M. Chinnaiah while working as an Lower Gr. Clerk had drawn the following cheque from Pay and Accounts Office Payable to different departments but kept under his custody without maintaining any cheque register, which clearly indicates that he failed to maintain devotion to duty and violated the provisions of Rules.

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S. No.	Cheque No.	Date	Amount	Name of Deptt./Firm	Remarks
1	2	3	4	5	6
1.	C/1 690177	31.3.92	Rs.4,513.00	Officer-In-Charge DTO, Port Blair.	To be disbursed.
2.	C/1 690547	23.4.92	Rs. 138.00	A.E. Elect.Dept. Campbell Bay	-do-
3.	C/1 690546	23.4.92	Rs. 129.00	A.E. Elect.Dept. Car Nicobar.	-do-
4.	C/1 690545	23.4.92	Rs. 132.00	E.E.(R) Elect. Dept.,Rangat.	-do-
5.	C/1 694325	22.3.93	Rs.1,743.00	Manager,Govt. Press, Port Blair	-do-
6.	C/1 694324	22.3.93	Rs.2,209.00	Post Master,Head Post Office,P/Blair	-do-
7.	C/1 694578	29.3.93	Rs. 844.00	E.E.Stores,APWD, Port Blair	-do-
8.	C/1 694572	29.3.93	Rs. 515.00	A.E.(HQ),Elect. Deptt.,P/Blair	-do-
9.	C/1 694573	29.3.93	Rs. 262.00	A.E.(Elect.) Deptt.,Katchal	- do-
10.	C/1 694574	29.3.93	Rs. 176.00	A.E.(Elect.),Deptt. Car Nicobar	- do-
11.	C/1 694575	29.3.93	Rs. 235.00	A.E.(Elect.),Deptt. Hut Bay.	- do-
12.	C/1 694576	29.3.93	Rs. 54.00	A.E Elect. Deptt. Rangat	-do-
13.	C/1 645637	20.3.90	Rs. 104.00	A.E.(R)Elect. Deptt.,Rangat	To be revalidated
14.	C/1 645209	26.2.90	Rs. 47.00	-do-	-do-
15.	C/1 645634	20.2.90	Rs. 55.00	-do-	-do-
16.	C/1 280310	10.3.89	Rs. 63.00	E.E.(R)Elect Deptt.,Rangat	-do-
17.	BN/21 311967	04.9.93	Rs. 582.00	Commander,Yatrik	Banker's Cheque
18.	-do- 310489	14.9.93	Rs. 7,059.00	Manager, Govt. Press,Port Blai	-do-
19.	MT/K 850003	13.9.93	Rs. 2,500.00	Ranjan Ram	Demand Draft.

Simultaneously criminal proceedings under Section 409/468/471/477(A) of IPC was initiated on the basis of G.R. Case No.1408 of 1995. The judgement delivered on 28.6.13 records the following :

This is a case U/S 409/468/471/477(A) of Indian Penal Code. The case of the prosecution in a nutshell is that on 12.10.1993 one U.S. Verma, the then Labour Commissioner and Director of Employment and Training/Commissioner for Workmen's Compensation made a complaint against M. Chinnaiah, LGC (under suspension) of his department. It was stated in the complaint that M. Chinnaiah while holding the charge of cashier in the Department was assigned to deal with the correspondence relating to the payment of compensation and all allied works pertaining to the withdrawal of compensation amount from State Bank of India, Port Blair and disburse or deposit the amount as per instruction of U. S. Verma. It was alleged that M. Chinnaiah while discharging his aforesaid duties took out a cheque leaf bearing no.0763463 from the Cheque book issued in faour of the Commissioner for workmen compensation and filled up the same to the tune of Rs.53,433/- and utilized the same for drawing the signature of U.S. Verma. It was further detected from the cheque book that the cheque bearing No.0763460 dt.27.7.1993 amounting to Rs.61,751/- was also drawn by forging signature of the Commissioner for Workmen's Compensation.

In terms of the written complaint of the aforesaid defacto complainant, police registered a FIR No.696/1993 dt. 12.10.1993 U/s, 409/468/471 of IPC at PS Aberdeen against M. Chinnaiah s/o Lt M. Muthaiah, LGC. The case was then investigated by the then SI Mohd. Alsam SHO of PS CCS. During the course of investigation the investigating Officer seized the admitted handwriting of the accused, cheque leafs, appointment order of the accused as Cashier, Cash Book, leave regularization order of Sri U. S. Verma, Labour Commissioner and original cheques bearing Nos.0763449, 0763458, 0763459, 0763460, 0763463, 0763462 and 0763461. The investigating officer also obtained the forged signatures of the accused purported to have been signed as U.S. Verma, Labour Commissioner, specimen handwritings, digits, initials and specimen signature of U.S. Verma. The accused was arrested on 15.10.1993, The Labour Commissioner sent another letter vide No.35 via/LC-93/184 dt.20.10.1993 regarding withdrawal of a sum of Rs.61,882/- instead of Rs.1882/- by the accused upon forging the signature. In terms of the aforesaid allegations, certain documents were seized and sent to the Govt. Examiner of Questioned Documents, Central Forensic Institutes, Calcutta for expert opinion.

Subsequently on transfer of SI. Mohd. Aslam the case file was handed over to the then SHO of PS CCS. During the course of investigation the investigating officer received the expert opinion from GEQD, Calcutta along with original documents. The Govt. examiner opined that the accused forged the signature of the Labour Commissioner in the official

cheque bearing No.0763463 and 0763460 withdrew a total sum of Rs.1,15,184/-. The Govt. examiner further opined that accused encashed Cheque no.0763499 by enhancing Rs.60,000/- against actual payment Rs.1882/- by adding 'sixty' in words and '6' in digit after obtaining the signature of the then Commissioner of Workmen's Compensation. The investigation revealed that the accused M. Chinnaiah misappropriated the Government money amounting to Rs.1,75,184/- from the account of Workmen's Compensation maintained at the State Bank of India, Port Blair Branch. It was also found during investigation as cash book No.10 page 51 he handed over cash of Rs.9,225/- whereas the actual amount was Rs.13,433.50/-thereby the accused had also embezzled a sum of Rs.4208/-. Thus it was found that the accused misappropriated a total sum of Rs.1,79,392/-. Thereafter, the Investigating Officer completed the investigation of this case and found prima-facie materials against the accused U/S 409/468/471/477(A) and being satisfied against him submitted charge sheet No.133/94 dt. 26.12.1994 against the accused person namely M. Chinnaiah. Charge was framed against the accused U/S 409/468/471/477(A) of IPC on 23.8.2000 to which he pleaded not guilty and claimed to be tried.

The point for determination in the said Criminal case was as under :

Whether the prosecution has been able to prove the offence U/s 409/468/471/477(A) of IPC against the accused person beyond the cloud of all reasonable doubts.

Its "DECISION WITH REASONS" of the Criminal court is set out verbatim

herein below :

DECISION WITH REASONS

Having heard both sides and after perusal of the materials on record, it appears that the fate of this case hangs on the documents that were seized and alleged to have been forged by the Prosecution.

The facts of this case clearly indicates that the complaint was filed by US Verma the then Labour Commissioner. But the prosecution failed to produce him as a witness. As per the evidence of PW-5, the defacto complainant is the proper custodian of the relevant documents.

In the charge sheet it has been stated that the cheque No.0763499 has been forged by the accused upon enhancing Rs.60,000/- from the original amount of Rs.1882/-. Ld Counsel for the accused during the cross-examination of PW-6 produced the cheque bearing No. .0763499 which was proved by the PW-6 as Exbt -A. The said cheque appears to be an unused cheque leaf wherein no amount or other necessary entries have been made. On the contrary it appears that Cheque No..0763499 is amounting to Rs.61,882/- which has been proved by the PW-4 i.e. the Govt. Examiner to have been forged. Now this is a major

contradiction with the facts of this case and evidence recovered during investigation that has been referred in the charge sheet.

The failure to examine the defacto-complainant and the aforesaid contradiction that has cropped up during the trial of the case in regards to the facts and evidences do not support the case of the prosecution. In view of these findings discussed hereinabove the Court is of the view that the alleged forgery of the seals and signatures appearing in the cheques and cash book No.10 is not proved at all. The prosecution failed to produce any other witnesses or credible evidences which may substantiate charges framed against the accused persons.

Thus, the Court finds no corroboration amongst evidences of the relevant witnesses with materials on record which may prove the allegations against the accused person beyond all points of reasonable doubt. Accordingly, I do not find the accused persons guilty of the charge brought against them. In other words, the prosecution has failed to prove the offence U/s 409/468/471/477A of IPC against the accused person beyond the shadow of all reasonable doubts.

Hence it is

ORDERED

That the accused persons namely M. Rajiniah is not found guilty of the offences U/s 409/468/471/477A of IPC and are acquitted in terms of Section 248(1) of Cr.P.C. and are also discharged from the bail bond.

4. During the departmental proceeding on 12.02.2016 The Labour Inspector/Presenting Officer writes to The Labour Commissioner as under:

"As P.O. I able to produce only 04 nos. (four) out of 33(thirty three) original listed documents before the Inquiry Officer, during the proceedings other 29(twenty nine) original listed documents were not provided to me, as informed earlier, due to these were not available/traceable in the office records.

In this apropos it is necessary to mention here that the Inquiry Officer had given several opportunities to produce the listed documents before the inquiry, however, once more opportunity is to be given by the I.O. to produce the same by 17/12/2016."

5. On 11.4.14 the Inquiry Officer writes to the Labour Commissioner the following :

The Presenting Officer, has intimated the matter to you vide his letter dated 19/2/2014 (enclosed), with a copy to the undersigned that only 02 Nos. of listed documents are available in your office out of 33 Nos. of listed documents. The Presenting Officer has been advised to

trace out the other listed documents as early as possible and intimate the undersigned for further proceeding in the matter vide Daily Order sheet No.30 dated 24/02/2014.

Hence, it is requested that the listed documents as shown in the Annexure III of the charge sheet may be made available through the Presenting Officer preferably within 20 days, so as to conclude the inquiry thereafter please.

6. On 2.12.15 the Deputy Director (DM) writes to the Labour Commissioner, Port Blair as under :

This is in continuation to the letter of the then I.O. dated 19/02/2014 on the subject cited above.

In the meanwhile P.O. has produced 4 out of 33 listed documents which have been inspected. Additionally, P.O. produced 7 xerox unattested copies of the listed documents, which the C.O. did not accept and requested for production of originals.

Sufficient time for production of documents has already been granted. The C.O. has in the last date of hearing, requested for waiving of inspection of original documents at this stage and has requested to exhibit the same at the time of hearing of witness (when it can be inspected too). The inquiry has been stuck at 'inspection of document stage' because of non-availability of documents since long.

Keeping in view of the above, it has been decided to issue notice to the witnesses. However, in the meanwhile, it is once again requested that the original documents, if available may be handed over to the P.O. immediately as examination of witnesses is likely to commence during the later part of December, 2015.

7. On 11.8.16 the Inquiry Authority concluded in favour of the applicant as under

The Charges under Article I to IV could not be proved against the C.O. in view of the discussions as made while discussing these charges under Item 1 of the issues framed. The charges under V to VIII has not been dwelled into in view discussions under item I of the issues framed and as the very same charges i.e. shortage of cash/forgery and misappropriation of government money are discussed while framing charges in the Criminal Prosecution by the Ld Court and the C.O. has been acquitted by the Criminal Court of these charges by the Judicial Order. The Charges under Article IX and X could not be proved against the C.O. in view of the discussions as made while discussing these charges under Item 2 & 3 of the issues framed.

8. On 29.3.17 the Disciplinary Authority, the Secretary (Per I) without disagreeing with the Inquiry Officer, without issuing any disagreement note to the charged Officer and calling for his reply, issued penalty order of dismissal from service on the basis of the following (extracted with supplied emphasis clarity):

WHEREAS the Inquiry Officer in his report has stated that Article i to iv could not be proved by simply stating that the allegation made against the Charged Officer could not be substantiated on account of non production of original documents.

WHEREAS the Inquiry Officer in his report has stated that Article v to vii regarding allegation of forgery /tampering and embezzlement of government money by the Charged Officer could not be proved by referring to the acquittal in the Trial Court on similar charges.

WHEREAS the Inquiry Officer in his report has not maintained anything about the allegation of charges made against the Charged Officer under Article viii.

WHEREAS the Inquiry Officer in his report has stated that Article ix could not be proved stating that it is observed that neither is the Stock Register or inventory list to original these conclusion been made part of the listed documents.

WHEREAS the Inquiry Officer in his report has stated that the allegations of charges made in the Article x is not proved stating that the Cheque Register or the certified copies of the Cheques found in possession of the Charged Officer are not part of listed documents. No evidence to prove charges could be brought out by Presenting Officer in this regard during the proceedings.

WHEREAS, perusal of the enquiry report clearly shows that while discussing Article -v to viii the Inquiry Officer has relied upon the order of the Trial Court. At this point it is pertinent to point out that the scope of a departmental inquiry is to determine whether a public servant has committed a misconduct or delinquency and if the same constitutes a crime, to consider a question whether the delinquent deserves to be retained in public service or to be awarded with penalty. On the other hand, the scope of an inquiry in a criminal trial is to determine whether an offence against the law of the land has taken place. The degree of proof is not the same in both disciplinary proceedings and criminal cases. The standard of proof in departmental inquiry is preponderance of probability and not proof beyond reasonable doubt as required in criminal trial. The rules relating to appreciation of evidence is also not the same. Besides, the rigor of the rule of evidence is not applicable to the departmental proceedings. However, the Inquiry Officer has failed to apply mind to the findings of the order of the Trial Court judicial

Magistrate First Class-I (JMFC) dated 28.06.2013 He has simply hurried to the conclusion that the charged official was acquitted of the criminal case and in doing so Inquiry Officer failed to examine the fact and the nuances as brought out in the order of the Trial Court i.e. judicial Magistrate First Class (JMFC) order dated 28.06.2013. The Trial Court in its order has clearly stated that Government Examiner of Questionable Documents(GEQD) Calcutta clearly opined that the accused forged the signature of the Labour Commissioner in the official cheque bearing No.0763463 and 0763460 to withdraw a total amount of Rs.115184/-. The Government Examiner has also opined that the accused (i.e. charged official) encashed cheque No. 0763499 by enhancing Rs.60,000/- against actual payment of Rs.1882/- by adding 'sixty' in words and '6' in digit after obtaining signature of the then Commissioner of Workmen's Compensation. The acquittal of the accused i.e charged official was not on the grounds of merit but because of the failure of the prosecution to prove the allegations beyond reasonable doubt.

From the extract supra, it is evident that the disciplinary authority relied upon not the documents listed in the Chargememo, but the report of GEQD produced in criminal proceeding, yet discarded the conclusion of the criminal court with the observation as under "Considering the records of the inquiry and the facts and circumstances of the case and written representation submitted by Shri M. Chinnaiah, Lower Division Clerk, the undersigned has come to the conclusion that ends of justice would be met if Shri Chinnaiah, Lower Grade Clerk is **dismissed from service**. Chinnaiah, He produced on the basis of GEQD report to punish the delinquent.

9. Aggrieved the applicant preferred an appeal, dated 3.4.17 to the Chief Secretary, Appellate Authority specifically pleading as under :

The facts of the criminal case and the facts of the disciplinary proceedings initiated against me was on similar fact and accordingly I had forwarded the judgment dt.28.06.2013 passed by the Judicial Magistrate First Class -I at Port Blair to the authorities and requested to

release my all service benefits which was held due to the pendency of the criminal case.

The inquiry officer while submitting the inquiry report has categorically held that the Presenting Officer (PO) has given several opportunity for production of original documents so as to enable me to inspect the documents but finally on 18.09.2015 the Presenting Officer had produced only two more original documents which I was inspected and the Presenting Officer failed to produce further any documents.

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The Presenting Officer had also informed that he is also working in the same department and he had also made personal efforts to trace out the original documents but the same could not be materialized and accordingly, the examination of the witnesses of the said proceedings was closed and the Inquiry Officer directed the P. O. As well as me to submit written briefs for submission of inquiry report.

After receipt of the brief statements of presenting officer and me the inquiry officer has submitted report to the disciplinary authority on 11.08.2016 wherein the inquiry officer has held that none of the charges has been proved against me. Though the inquiry officer has submitted detailed report by holding that no charge has been proved against me but inspite of the same the disciplinary authority had issued an order vide order No.967 dt. 20.13.2017 by dismissing me from my service with immediate effect.

It is well settled law that if the disciplinary authority is not in agreement with the inquiry report submitted by the inquiry Officer and the disciplinary authority is intending to impose punishment upon the charge officer, it is the duty of the disciplinary authority to give an opportunity of hearing to the charge officer by issuing show cause notice upon the charge officer stating the grounds as to why the disciplinary authority is in disagreement with the findings of the inquiry of the reports submitted by the inquiry officer.

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As such the disciplinary authority have violated the provisions of natural justice and without giving an opportunity of hearing to me the disciplinary authority has passed an order of punishment and as such the order of punishment is required to be set aside and quashed.

The disciplinary authority has relied upon the Expert Opinion but neither the Expert was examined as witness nor the Expert Report was exhibited during the examination of the witnesses or at no points of time the Expert Report was brought on record.

That as per Memorandum dt. 02.06.1997 the prosecution has relied upon 33 documents but at the time of evidence during the disciplinary proceedings no such documents was produced to prove the case against me. The Presenting Officer had examined altogether five witnesses as listed in the list of witnesses of Annexure -IV of the Memorandum dt.02.06.1997 but none of the witnesses have proved or stated anything

against me and as such the order passed by the disciplinary authority is bad in law and in fact and as such the same is liable to be set aside.

I further like to inform you that I had rendered about 30 years of service and for the last 24 years my increments and other service benefits have been held up and I am having two handicapped daughters and the total are depending upon me. Due to my dismissal from service, my family is facing great difficulties.

He had thereby addressed the following legal issues and sought for redressal :

1. Failure to produce of listed documents which resulted in principles of natural justice.
2. Failure to issue disagreement note by DA before punishing him.
3. Failure to call expert whose report has been relied upon etc.
10. The appellate authority in its order an appeal dated 13.11.17 issued the following order :

AND WHEREAS, on going through the findings of the Inquiry Report and other documents the Disciplinary Authority disagreed with the findings of the Inquiry Officer and observed that in the light of expert opinion of GEDQ, Calcutta, there was no ambiguity that the Charged Officer M. Chinnaiah indulged in serious misconduct while indulging in forgery, financial embezzlement and criminal breach of trust by misappropriating government money for his personal gain.

AND WHEREAS, in consideration of the records of the inquiry and the facts and circumstances of the case and written representation submitted by Shri M. Chinnaiah, Lower Grade Clerk, the Disciplinary Authority came to the conclusion that ends of justice would be met if Shri M. Chinnaiah, Lower Grade Clerk was dismissed from service.

AND WHEREAS, Shri M. Chinnaiah has now preferred an appeal dated 03/04/2017 against the dismissal Order bearing No.967 dated 29/03/2017 with following arguments/reasons :-

1. The inquiry was delayed and many inquiry officers were appointed from time to time.
2. The prosecution had not furnished the documents.
3. The Disciplinary Authority had not given an opportunity of hearing to the Charged Officer by issuing Show Causes Notice upon the CO stating the ground as to why the Disciplinary Authority was in disagreement with the findings of the Inquiry Report.

4. The Disciplinary Authority had relied upon the expert opinion but the expert opinion was neither examined nor exhibited during the examination of witness.

AND WHEREAS, Rule 27(2) of CCS Rules provides that in the case of an appeal against an order imposing any of the penalties specified in Rule 11 or enhancing any penalty imposed under the said rules, the Appellate Authority shall consider :

- a) Whether the procedure laid down in these rules has been complied with and if not, whether such non-compliance as resulted in violation of any provision of the constitution of India or in failure of justice.
- b) Whether the finding of Disciplinary Authority are warranted by the evidence on record, and
- c) Whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe; and pass orders :
 - (i) Confirming, enhancing, reducing or setting aside the penalty or
 - (ii) Remitting the case to the authority which imposed or enhanced the penalty or any other authority with such direction as may appear fit in the circumstances of these cases-

AND WHEREAS, I being the Appellate Authority, have gone through the appeal preferred by the Appellant, the entire facts and circumstances of the case as well as other material on record.

AND WHEREAS, I find that Shri M. Chinnaiah had not performed his duties with sincerity and with integrity. I also find that although there have been some procedural lapses during the conduct of the disciplinary inquiry, the same do not in itself materially affect the findings of the inquiry. I have also taken note of the long delay in disposal of this case and the fact that the appellant has two handicapped daughters, who are dependent upon him, am of the view that the penalty imposed upon the appellant, namely Shri M. Chinnaiah is somewhat harsh and could be reduced on humanitarian grounds.

Now Therefore, I being the Appellate Authority upon perusal of all facts and circumstances of the case and the materials on record, deem it appropriate that the ends of justice would be met by reducing the major penalty of "dismissal from service" imposed upon Shri M. Chinnaiah, the Appellant, vide Order No.967 dated 20.03.2017 to the major penalty of "Compulsory Retirement", invoking the provisions of Rule 27(2) of the CCS(CCA) Rules, 1965. The appeal of the appellant Shri M. Chinnaiah, LGC is accepted only to that extent.

11. The legal lacunae in the conduct of proceedings are noted as under:

(1) The criminal proceedings on self same charge of fraud/embezzlement / criminal breach of trust ended with acquittal. Even the I. O. Found the applicant not guilty, yet the DA penalised him with dismissal without issuing any disagreement note with proposed penalty and opportunity to show cause.

(2) In his appeal, the applicant had raised substantial issues on principles of natural justice. The appellate authority failed to delve into or address any of such issues, or to conclude appropriately. He simply modified the punishment on humanitarian ground which he was permitted only upon considering the matter in its entirety.

(3) Failure to produce listed documents and witnesses, on the basis of which charges were proposed to be sustained which itself vitiates an enquiry, is apparent and palpable from records.

(4) Disciplinary authority found the applicant guilty wholly on the basis of the report of GEQD which was not a listed document, and stood already discarded in the criminal proceedings.

(5) The Disciplinary Authority failed to issue his ^{dis}agreement note before dismissing the applicant and thereby acted illegally and without jurisdiction.

12. In the aforesaid backdrop both the penalty order as well as the appellate order is quashed.

The matter is remanded back to the disciplinary authority with liberty to act in accordance with law.

13. The interregnum between dismissal or compulsory retirement till further order shall be treated in accordance with law with appropriate consequential benefits.

14. O A is thus disposed of. No costs.

Nandita Chatterjee
Member(A)

Bidisha Banerjee
Member(J)

AMIT

